

An appointment must be made according to the Scheme of Service which has been prescribed. This tribunal cannot interfere to request the Public Body to revert to the old Scheme of Service as it is legally bound to use the prescribed Scheme of Service.

The appeals refer to appointments to the post of Lead PropertyReferencer at the Ministry of Finance and Economic Development (Valuation Department)whereby, following a first appointment exercise, two officers were appointed, namely Mr. I. Gunga and Mr. M.C. Noel. This was followed later by the filling of another vacancy that led to the appointment of Mr. J.J.R. Andre.

There are nine Appellants in the first case and in the second case the same group appealed with the addition of a tenth Appellant, Mr. M. F. Mangou. The Appellants in both cases are aggrieved that they have not been appointed to the post.

Appellants' Case

Appellant Baccus deponed before this Tribunal on behalf of all the Appellants and affirmed as to the correctness of his grounds of appeal and his Statement of Case.

The Appellants averred that when the vacancies occurred for the post there was a Scheme of Service whereby appointment was to be made by promotion. However,at the time the post was advertised, a new Scheme of Service was used which, according to Appellants, was contrary to the Pay Research Bureau Report of 2008 which recommended that for grade-to-grade appointment this should be on the basis of seniority and by promotion and not by selection as per the amended Scheme of Service.

The Appellants averred that by changing the mode of appointment from promotion to selection they have been deprived of their legitimate expectations to be appointed to the post after long years of service. They found that officers junior to them were appointed. They claimed that they were fully qualified, had longer experience and were senior to those appointed. The main contention however clearly seemed to be the changes brought to the Scheme of Service.

The Appellants submitted that Respondent should revert back to the former Scheme of Service so that the appointment to the post of Lead Property Referencer be made by promotion “on the basis of experience and merit from the grade of Senior Property Referencer as in the past”.

Respondent’s Case

Respondent averred that the Scheme of Service was prescribed on 22 October 2009. The post of Lead Property Referencer was filled by selection from amongst officers in the grade of Senior Property Referencer who possess the required qualifications as laid down in the Scheme of Service and who reckoned four years’ service in a substantive capacity in the grade.

The Responsible Officer (RO) of the Ministry reported two vacancies in the grade on 19 August 2010. These vacancies were advertised amongst qualified officers on 8 October 2010 and there were 34 candidates. They were interviewed on 2 and 4 February 2011. On 17 March 2011, the Respondent informed the RO that the first two Co-Respondents were selected and were offered appointment.

On 29 September 2011, the RO reported another vacancy in the grade of Lead Property Referencer and recommended to Respondent that it be filled from the previous selection carried out. Mr Andre, who came after Mr Noel on the merit list drawn up following interviews in February 2011, was appointed on 19 October 2011.

Respondent agreed that prior to 1 July 2008, the post of Lead Property Referencer (known then as Principal Valuation Officer) was filled by promotion on the basis of experience and merit of officers in the Grade of Senior Valuation Officer reckoning at least four years’ experience in a substantive capacity in the grade. However, in the Pay Research Bureau Report of 2008, the post of Principal Valuation Officer was restyled Lead Property Referencer. Action was taken to amend the Scheme of Service so that appointment would be by selection instead of by promotion in order to ensure that a candidate with the right profile would be selected as the grade of Lead Property Referencer was going to be at a middle management level where some decision-making ability, leadership qualities and skills would be required. The candidates were thus assessed on the basis of their (i) qualifications, (ii) years of experience, (iii) leadership, organizing and supervisory skills, (iv)

communication and interpersonal skills and (v) exposure to nature of work. The change in the mode of appointment from promotion to selection was in line with the recommendation of the Pay Research Bureau framework for appointment. The amended Scheme of Service was prescribed on 22 October 2009. However, when the vacancies occurred in August 2009, action was already underway for amending the Scheme of Service.

Respondent averred that when a Scheme of Service was amended and prescribed, it became the official Scheme of Service for the given post and any vacancy in the grade could only be filled in accordance with that official Scheme of Service.

Determination

The Appellants are in both cases contesting the decision of Respondent to appoint the Co-Respondents on the basis of the amended Scheme of Service. They consider it unfair that when the vacancies occurred, there was another Scheme of Service in application. This Scheme of Service which should have been the basis for deciding who should be appointed Lead Property Referencer was replaced. In other words, by keeping to appointment by promotion they stood a chance of being selected for the post as that they are senior to those appointed.

Respondent was quick to say that the new Scheme of Service was the result of the restyling of the former post of Principal Valuation Officer into that of Lead Property Referencer as recommended by the PRB. There was a need to change the mode of appointment as was explained by Respondent because of the change in the scope of duties.

The Appellants have made reference to the PRB Report of 2008 in support of their contention that the PRB recommended that grade-to-grade appointments should be by promotion. It is apposite to refer to what the PRB says at paragraph 9.18 of its report “grade-to-grade promotion at levels where officers are expected to perform duties of the same nature but requiring mainly increased experience for the performance of the job is generally made on the basis of seniority”.

However, it was pointed out that the duties of the Lead Property Referencer were going to be different and involved managerial attributes and were not solely

higher technical skills. The change to selection instead of promotion must be viewed from this angle. The PRB itself says at paragraph 9.19 that “harmonizing promotions procedures and criteria is not a *sine qua non* condition to achieve the desired objective i.e. the enlistment of the right candidate for the right job”. The PRB, therefore, concluded at paragraph 9.20 (b) of its report that “grade-to-grade promotion should be determined on a case to case basis and the mode of promotion explicitly mentioned in the relevant Schemes of Service”. This is why Respondent rebutted the averment of the Appellants that the change from promotion to selection was against the recommendation of the PRB.

The Tribunal, while reiterating the fact that it has no jurisdiction on prescription of Schemes of Service, has thought it fit to delve on the issue as reference is often made before the Tribunal about what the PRB said or recommended in its reports. It must be understood that the PRB makes recommendations and these need to be given effect. The prescription of new Schemes of Service is meant to take on board these recommendations.

The Appellants have also averred that they were fully qualified and had longer terms of service. However, the appellants were interviewed according to a new Scheme of Service and the scope of duties of the post was different from that of Principal Valuation Officer following the restyling of the post to Lead Property Referencer. It stands to reason that the assessments of the candidates were based on the requirements of the new Scheme of Service and the requirements of Regulation 14 of the Public Service Commission Regulations. It is a fact that the Appellants and the Appointees were all fully qualified and eligible for the job as they were called for interview. The qualifications and years of experience of the Appellants were available in the application forms which were before the interview panel. We have found no reason to believe that the interviewing panel disregarded the years of experience of the Appellants who were called for interview.

During the hearing,reference was made to the judgements of the Supreme Court in Bissoonauthsing v/s Public Service Commission (2000SCJ 128) and Appadu v/s Public Service Commission (2003 SCJ 29). However, in these cases, the issues concerned the role of the Responsible Officer in the actual selection exercises and the relative experience/seniority of applicants to the different posts.

These issues are not relevant to the present appeals which are mainly concerned with the relevant Scheme of Service relied upon in the appointment exercise.

Appellant also made reference to the award of the Civil Service Arbitration Tribunal (CSAT) in the case of State Employees' Federation and Public Service Commission and Others (General Notice No. 732 of 2008) concerning

“Whether the amendment brought under item “Qualification” of the scheme of service for the post of Deputy Forest Ranger altering the mode of appointment from “promotion to selection” is in order.

Whether the immediate application of the amended scheme is fair, reasonable, proper and non prejudicial”.

The CSAT's conclusion was that

“What we find therefore is that judicial bodies will not interfere with executive's decision unless and until the principles of natural justice are being clearly offended. The purpose of the Industrial Relations Act as amended is to maintain good industrial relations. Our wide powers under the Act should not go as far as interfering with the executive decisions unless such cause is justified.”

In the case before the Tribunal there has been an amended Scheme of Service for the post of Lead Property Referencer and that becomes the binding instrument for appointment to the post. Respondent cannot be asked to recruit on the basis of the old scheme as this would not be legally in order.

The appeals are, therefore, set aside.

- *** Exceptionally this case is not being treated confidentially as there had been a motion for Judicial review before the Supreme Court by appellants (messrs Baccus and others) which was later withdrawn. All information relating to the case was made public as the Supreme Court, unlike the PBAT, does not deal with such motions in camera.**